IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3872 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SIRAJKHAN BADARUKHAN PATHAN

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:

MR MM TIRMIZI for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/07/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 26-2-2000 passed by the Police Commissioner, Surat City declaring him as a dangerous person.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, detenu has demanded copies of certain documents by way of representation dated 14-3-2000, but the same have not been supplied by the authority. Learned APP for the State, Mr.S.J.Dave has fairly admitted the same.

4. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

> "Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

5. It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, copies of the documents, though demanded, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided

under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

6. In view of the above, the petition is allowed. The impugned order of detention dated 26-2-2000 passed against the detenu is hereby quashed and set aside. The detenu-Sirajkhan Badarukhan Pathan is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/